

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

07/16/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000766

FILED: _____

ANTHONY R CURTIS

LAWRENCE I KAZAN

v.

STATE OF ARIZONA

CARRIE M COLE

FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC
SCOTTSDALE CITY COURT

MINUTE ENTRY

SCOTTSDALE CITY COURT

Cit. No. 1468697; 1468697X

Charge: 1. DUI (ALCOHOL
2. BAC .10 OR HIGHER WITHIN 2 HRS DRIVING
3. DRIVING ON RAISED MEDIAN
4. NO CURRENT PROOF OF INSURANCE
EXTREME DUI

DOB: 09/14/66

DOC: 01/05/01

This Court has jurisdiction of this appeal by the State of Arizona pursuant to the Arizona Constitution Article VI, Section 16, A.R.S. Section 12-124(A), and A.R.S. Section 13-4032(6).

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This matter has been under advisement since the time of oral argument on June 26, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered the arguments of counsel, their memoranda and the record of the proceedings from the Scottsdale City Court.

On January 5, 2001 Appellee, Anthony Curtis, was arrested by the Scottsdale Police and charged with Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Driving With a Blood Alcohol Content Greater than .10 Within 2 Hrs of Driving, a class 1 misdemeanor, in violation of A.R.S. Section 28-1381(A)(2); Driving on a Raised Median, a civil traffic offense in violation of A.R.S. Section 28-731; and No Current Proof of Insurance, a civil traffic offense in violation of A.R.S. Section 28-4135(c). Appellee entered pleas of Not Guilty and filed a Motion to Suppress all evidence which he claimed was the fruit of an unreasonable stop by the Scottsdale Police officers of his vehicle. Appellee claimed the police lacked a "reasonable suspicion" to stop his vehicle. The trial court conducted an evidentiary hearing on July 18, 2001. The trial judge summarized the facts presented at that evidentiary hearing:

On January 5, 2001, the Defendant's vehicle was traveling in a westbound direction on Camelback Road. Officer Haldaman was also traveling in the same direction. Both of the vehicles were initially on the east-side of Scottsdale Road. The evidentiary hearing testimony indicated that there was no improper driving or violations of the law as the Defendant's vehicle proceeded westbound on Camelback Road. After the Defendant's vehicle passed the intersection, it made

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a proper maneuver into a left-turn lane and executed a U-turn. During the U-turn process, the Defendant's right front tire came into contact with the curb on the south-side of Camelback Road. Testimony of Officer Haldaman indicated that the right front tire rode onto the top of the curb and then came down to the roadway, after which the Defendant continued with the U-turn and proceeded eastbound to Scottsdale Road. At Scottsdale Road, the Defendant turned southbound and proceeded approximately one-eighth (1/8) of a mile, until he was stopped by Officer Haldaman. The evidence also indicated that after the U-turn procedure, Defendant did not exhibit any bad driving or commit any moving violations. Testimony at the hearing indicated that the sole reason for stopping the Defendant was due to the contact the Defendant's right front tire made with the curb during the U-turn process. But for that particular fact, the Defendant was observed driving properly before and after that particular occurrence.¹

The trial judge specifically found "inadequate facts upon which to authorize the stop and detention of the Defendant"², and ordered all evidence obtained after the seizure of Appellee be suppressed. A timely Notice of Appeal was filed by the State in this case.

Appellee claims that the trial court erred in suppressing all evidence gathered after an unreasonable stop of Appellee. Appellee claims that the Scottsdale Police Officers

¹ Order of September 14, 2001, record on appeal from Scottsdale City Court, at pages 1-2.

² Id. at page 6.

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did have a "reasonable suspicion" which would justify the stop of Appellee's vehicle. An investigative stop is lawful if the police officer is able to articulate specific facts which, when considered with rational inferences from those facts, reasonably warrant the police officer's suspicion that the accused had committed, or was about to commit, a crime.¹ These facts and inferences when considered as a whole the ("totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."² A.R.S. Section 13-3883(B) also provides, in pertinent part, authority for police officers to conduct an "investigative detention":

A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation.

A temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment even if the detention is only for a brief period of time.³ In Whren⁴, the United States Supreme Court upheld the District's Court denial of the Defendant's Motion to Suppress finding that the arresting officers had probable cause to believe that the arresting officers had probable cause to believe that a traffic violation had occurred, thus the investigative detention of the Defendant was warranted. In that case, the police officers admitted that

¹ Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); State v. Magner, 191 Ariz. 392, 956 P.2d 519 (App. 1998); Pharo v. Tucson City Court, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

² United States v. Cortez, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621, (1981).

³ Whren v. United States, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

⁴ Id.

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they used the traffic violations as a pretext to search the vehicle for evidence of drugs. The Court rejected the Defendant's claim that the traffic violation arrest was a mere pretext for a narcotic search, and stated that the reasonableness of the traffic stop did not depend upon the actual motivations of the arresting police officers. Probable cause to believe that an accused has violated a traffic code renders the resulting traffic stop reasonable under the Fourth Amendment.⁵

The sufficiency of the legal basis to justify an investigative detention is a mixed question of law and fact.⁶ An appellate court must give deference to the trial court's factual findings, including findings regarding the witnesses' credibility and the reasonableness of inferences drawn by the officer.⁷ This Court must review those factual findings for an abuse of discretion.⁸ Only when a trial court's factual finding, or inference drawn from the finding, is not justified or is clearly against reason and the evidence, will an abuse of discretion be established.⁹ This Court must review *de novo* the ultimate question whether the totality of the circumstances amounted to the requisite reasonable suspicion.¹⁰

In this case the trial judge entered a detailed order granting Appellee's Motion to Suppress. The trial judge explained:

...there was no evidence in this particular case to indicate or provide the officer with any indication upon which to base a reasonable suspicion of criminal activity. The only thing

⁵ Id.

⁶ State v. Gonzalez-Gutierrez, 187 Ariz. 116, 118, 927 P.2d 776, 778 (1996); State v. Magner, *Supra*.

⁷ Id.

⁸ State v. Rogers, 186 Ariz. 508, 510, 924 P.2d 1027, 1029 (1996).

⁹ State v. Chapple, 135 Ariz.

¹⁰ State v. Gonzalez-Gutierrez, 187 Ariz. At 118, 927 P.2d at 778; State v. Magner, 191 Ariz. At 397, 956 P.2d at 524.

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that occurred in this particular matter, which the court deems insufficient to provide an adequate basis to stop the Defendant's vehicle, was the contact the Defendant's right front tire made with a curb during a U-turn procedure.¹¹

The issue of whether Appellee's vehicle came in contact with the curb and the manner in which it allegedly made that maneuver is a critical issue of fact. After reviewing the record of the hearing of July 18, 2001, it is quite clear that the trial judge had serious questions about the credibility of Officer Haldaman. The trial judge stated:

I'm concerned about a credibility issue at this point...there are very simple questions being asked by Mr. Kazan, and they could be very simply answered and it's not getting done.¹²

Given the serious credibility issue relating to the State's only witness, this Court could not find that the trial judge erred in granting Appellee's Motion to Suppress.

IT IS THEREFORE ORDERED affirming the order of the Scottsdale City Court granting Appellee, Anthony R. Curtis', Motion to Suppress.

IT IS FURTHER ORDERED remanding this case back to the Scottsdale Justice Court for all further and future proceedings, if any, in this case.

¹¹ Id. at page 6.

¹² R.T. of July 18, 2001, at page 66.